



National Crime Prevention and Privacy Compact
COMPACT COUNCIL MEET
WEST YELLOWSTONE, MT
JUNE 24-25, 2003

MINUTES

The meeting of the Compact Council was called to order at 9:00 a.m. on June 24, 2003, in the Canyon/Dunraven/Geyser meeting room at the Holiday Inn Sunspree Resort, West Yellowstone, Montana, by Compact Council Chairman Wilbur Rehmann.

Chairman Rehmann welcomed everyone to the spring meeting of the Compact Council and expressed his appreciation to FBI staff for making the spring meeting in West Yellowstone possible. He also encouraged attendees to take some time and explore the beauty of West Yellowstone while they were in the area.

Chairman Rehmann next introduced Mr. Todd Commodore, the FBI's new Compact Officer. Mr. Commodore thanked Chairman Rehmann and the entire Council for being helpful during his transition. He said that he and the entire Compact team are looking forward to working with the Council and that they are dedicated to providing the best customer service and support possible.

Next, Compact Officer Todd Commodore called the roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance.

State Compact Officers:

- Mr. Rusty Featherstone, Oklahoma State Bureau of Investigation
- Lt. Col. Jeff Harmon, Maine State Police
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Mr. Wilbur Rehmann, Montana Department of Justice
- Ms. Donna Uzzell, Florida Department of Law Enforcement
- Major Mark Huguley, South Carolina Law Enforcement Division
- Ms. Diane Schenker, Alaska Department of Public Safety
- SFC John H. O'Brien, New Jersey Division of State Police
- Mr. David Sim, Kansas Bureau of Investigation

State/Local Criminal Justice Agency Representative:

- Vacant

Federal Noncriminal Justice Agency Representative:

- Ms. Kathy Dillaman, Office of Personnel Management

Federal Criminal Justice Agency Representative:

- Ms. Winona Varnon, Office of Personnel Management

Advisory Policy Board Representative:

- Mr. Frank Sleeter, Sun Prairie Police Department

Federal Bureau of Investigation:

- Mr. Michael Kirkpatrick, FBI, CJIS Division

Mr. Fred Rice, West Yellowstone town manager, welcomed attendees and provided them with information about the town of West Yellowstone.

Mr. Bill Wise, a national park ranger out of West Yellowstone, presented a slide show on the history of West Yellowstone National Park. He also provided maps and guides to the park for all attendees.

Chairman Rehmann then introduced Mr. Larry Fasbender, Deputy Director of the Montana Department of Justice, who welcomed guests on behalf of Attorney General Mike McGrath who was unable to attend the meeting. Mr. Fasbender then introduced Mr. Steve Tesinsky, Division Administrator from the Administration Technology Services Division at the Montana Department of Justice. Mr. Tesinsky provided an overview of the Montana Department of Justice's organizational structure. (See Attachment 1).

Compact Council Vice-Chairman Jeff Harmon recognized Chairman Rehmann on behalf of the Council, for his past four years of dedicated service as Chairman of the Council. This was Mr. Rehmann's last meeting as Chairman and Mr. Harmon presented Chairman Rehmann with a collage of pictures from his tenure with the Compact Council.

Mr. Gary Cooper, Executive Director, SEARCH, also honored Chairman Rehmann for his success with the Compact Council.

Next, FBI Compact Officer Todd Commodore, provided an update on the National Fingerprint File (NFF). He reported that to date, FBI staff has conducted site visits for Oklahoma, Colorado, Nevada, Georgia and South Carolina. According to his report, Oklahoma has tentatively scheduled to become a NFF state in September of this year, Colorado is estimating that they will become a NFF state in November or December, and Nevada is looking at January 2004. Georgia and South Carolina are still pending.

The next item of business was the approval of the minutes from the February 2003 meeting.

Compact Council Action: Ms. Winona Varnon, Office of Personnel Management, made a motion to approve the February 2003 minutes. The motion was approved by acclamation.

Meeting attendees in the gallery introduced themselves and the agency they represented (See Attachment 2).

Next, Chairman Rehmann provided the Compact Council with a list indicating which states have passed the Compact. He mentioned that Tennessee and North Carolina have just recently passed the Compact bringing the total number of Compact states to 18. There are 12 states who have signed the Memorandum of Understanding (MOU).

Chairman Rehmann next initiated/addressed agenda items.

Topic #1 Standards Committee Report on the Release of Expunged Record Data from State Central Repositories

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented this topic. He said that the state of Kansas raised the issue of interpretation regarding whether or not expunged records should be released pursuant to the Compact. The language in question was Article 4B in the Compact, referenced in Topic 3, that state criminal history record repositories shall provide criminal history records excluding sealed records to criminal justice agencies and other governmental and nongovernmental agencies for noncriminal justice purposes. According to Lt. Col. Harmon, the Standards Committee reviewed the language for sealed records, which states that according to Article 1, Part (21)(A)(iii), sealed record information is information that is “subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject.” The Standards Committee determined that while different terminology was used in Kansas than in the Compact, expunged records in Kansas still fell within the definition of “sealing” in the Compact. Lt. Col. Harmon further stated that as the topic was provided for information to educate states that they review the appropriate Compact language and then compare it to their state statutes. Further, irrespective of what terms are used to identify records that are to be withheld for certain purposes, states are not required to provide those records to III requests if the state meets the definition of sealing in the Compact.

Compact Council Action: This topic was accepted as information only.

Topic #2 **Standards Committee Report on the Ability to Search Online Civil File for Criminal Background Checks of Applicants for Positions of Trust**

Chairman Rehmann advised the Council that this topic was referred back to the Standards Committee for further discussion.

Topic #3 **Standards Committee Report on the State/NFF Qualification Requirements and Audit Criteria**

Lt. Col. Harmon, Standards Committee Chairman, presented this topic. He mentioned that there has been ongoing work in the Standards Committee dealing with both the State and FBI NFF Requirements. In February 2003, the Standards Committee reviewed the State Qualification Requirements (**See Attachment 3**) and there was one outstanding issue that still was not clear. Staff recommended adding qualification requirement I D: the total percentage of IAFIS system rejects due to low image quality on arrest fingerprint submissions shall be less than 0.5% of the total arrest fingerprint submissions. The total percentage of service provider rejects due to insufficient, indiscernible, erroneous or incomplete arrest fingerprint image submissions shall be less than 5%. Staff also recommended the associated audit criterion be changed to: rejects (L008) shall be less than 0.5%. The total combined percentage of service provider rejects (L0116, L0117, and L0118) shall be less than 5%. Lt. Harmon stated that the committee utilized data that was provided by staff in setting the standard. Furthermore, he stated that the Committee believes that the standard can be met by the states based on the past performance that's shown in the data. In conclusion, he clarified that the current request before the Compact Council was to adopt the standard. A proposed rule will be brought before the Council at a later time once the FBI NFF Qualification Requirements are completed.

Compact Council Action: *Lt. Col. Jeff Harmon made a motion to adopt the State/NFF Qualification Requirements and Audit Criteria as presented. The motion was seconded by Mr. Paul Heppner, Georgia Bureau of Investigation. The motion carried.*

Topic #4 **Utilizing the Delayed Fingerprint Submission Rule for Hazardous Materials Endorsement Criminal History Record Checks**

Chairman Rehmann provided a brief overview on this topic. He stated that at the last Council meeting in February, Mr. Justin Oberman and Mr. Bruce Brotman, Transportation Security Administration (TSA), provided the Council with a proposal to utilize the Delayed Submission Rule in order to meet their requirements to conduct name checks as stated in Section 1012 of the USA PATRIOT Act. Mr. Oberman and Mr. Brotman participated in open discussion regarding the concerns of the Council with the rule via conference call. According to Mr. Oberman, TSA has invested a significant amount of time into introducing the rule and it is still very much in the planning stages. In addition, there has been one conference call between TSA, Lt. Col. Harmon, and Chairman Rehmann regarding the planning stages. Chairman

Rehmann advised participants that, according to the proposal between TSA and the Council, TSA needed to call a meeting of all interested parties that are listed in the agreement. He further explained that this would include, not only the FBI, but the CJIS Advisory Policy Board (APB), AAMVA, local law enforcement, Compact Council, and other interested parties to talk about the plan for the capture and the channeling of fingerprints for application or renewal of a hazardous materials endorsement on a commercial drivers license. Chairman Rehmann expressed concern regarding the short time frame to implement the PATRIOT Act. Mr. Brotman advised the Council that within six months of passing the interim rule, they wanted to be able to begin fingerprint capture and processing. The Council expressed concern on how TSA was going to collect the fingerprints and how they were going to be channeled to the FBI, TSA, or to some other entity that TSA may designate.

Compact Council Action: Mr. Michael Kirkpatrick made a motion that the Chairman of the Compact Council send a letter of concern to the secretary of Homeland Security regarding this issue and that the letter should outline the Council's concerns and the need to take expeditious action in order to meet the deadlines that have been set by law, by regulation, and by agreement with the Council. The motion was seconded by Major Mark Huguley. The motion carried.

A draft letter was prepared and circulated to Council members for review and comment. The final letter was sent via E-mail (**See Attachment 4**) to Council members.

Additional Item:

Mr. Wilbur Rehmann presented a letter on behalf of the Council to Mr. Gary Cooper commending him for his outstanding service to the Council. Also, Mr. Frank Campbell, Assistant Attorney General, U.S. Department of Justice, presented Mr. Gary Cooper with a letter from U.S. Attorney General John Ashcroft, thanking him for his dedication and hard work throughout his 29 years with SEARCH. Mr. Cooper played an integral role in promoting cooperation between the states and the federal government to improve the management, availability, and the use of criminal history record information and identification technologies. Mr. Campbell stated that the processes of the FBI have benefited greatly from Mr. Cooper's knowledge and experience and that on behalf of the Department of Justice and the FBI, Mr. Campbell expressed to Mr. Cooper best wishes on his retirement.

Topic #5 **Standards Committee Report on Noncriminal Justice Outsourcing Initiatives and the Development of a Security and Management Control Outsourcing Standard and Drafting of Privatization Rule**

Chairman Rehmann mentioned that there have been numerous discussions on the privatization rule for noncriminal justice outsourcing. The Council has worked with Charlie Pruitt and the CJIS APB Security and Access Subcommittee, and more recently, Lt. Col. Harmon and the Standards Committee have discussed it.

Next, Lt. Col. Harmon presented the report from the Standards Committee. Originally, Mr. Bob McKeever, Maryland Department of Public Safety, chaired a committee that developed the draft outsourcing rule. It was decided that there needed to be some type of security standard that would be applicable for outsourcing that was undertaken pursuant to that rule. Lt. Col. Harmon stated that there were no items for the Council to act upon, however, he was going to provide the Council with some of the policy issues that have surfaced. The Standards Committee plans to revisit this topic again at its next meeting in August.

Lt. Col. Harmon briefed the Council on the following issues discussed by the Standards Committee:

Who should provide the notice of outsourcing, and what type of notice should the Compact Council require if an authorized agency were to engage in outsourcing? Did the Council want to be notified? Did the Council want to have copies of contracts? What level of review did the Council intend to undertake relative to outsourced activities? The sense of the committee regarding outsourcing was that the entity that outsources their activity still maintains management and control. Further, the entities would still be responsible for the actions of the vendor or the other governmental agency with which they have contracted; and finally the state of the authorized recipient would be the state that would be responsible for oversight activities.

The Standards Committee had discussions regarding technical standards. Lt. Col. Harmon stated that CJIS has very thorough technical standards that can be transferred to this standard and that they would cover the issues of technical security of the information.

Regarding what would take place as far as the relationship between the parties, the sense of the committee was that this standard would be a baseline. It would not prohibit a state or the authorized recipient to have stricter standards within their contract; but, they would at least have to meet this as a minimum standard, and that the standard would take precedent over the contract. A number of issues have been raised regarding what type of instrument could be used to effectuate the relationship. The feeling of the committee was that as long as the instrument contractually bound the two parties together to those requirements, then that would be acceptable. The

authorized recipient ultimately has to have management control and has to be responsible for the activities of any contractors or subcontractors that engaged in work under the outsourcing agreement.

Another issue of concern was personnel that might be involved from an outside vendor and what type of background check requirement might be required of that individual. The Committee recognized that noncriminal justice outsourcing differs from the criminal justice privatization in that the noncriminal justice outsourcing does not involve terminal access. Currently, there is no apparent authority to conduct a national background check, but a state may have a 92-544 statute authorizing a state check.

Lt. Col. Harmon also mentioned that the committee felt that there needed to be additional discussion regarding the outsourcing agreements. Whether they are contracts, service level or intergovernmental agreements, and how they are tied to audits. Additionally, how would the Council or the FBI measure compliance by the responsible party and how do you audit the activities of the contractor?

Lastly, there were discussions regarding re-dissemination. What are the current laws and rules regarding dissemination of the information? How do you ensure that the outsourced work that the individual is performing complies with the laws and rules; and how do you guarantee that there isn't re-dissemination or capture of data for reuse for some unauthorized purpose?

Lt. Col. Harmon concluded by saying that there was still a considerable amount of work to be done by the Standards Committee before they would be able to recommend a document to the Council for consideration.

Mr. Michael Kirkpatrick, ADIC CJIS Division, expressed concern regarding TSA and the potential that they were planning to outsource their background checks. Mr. Kirkpatrick felt that if the Council didn't move on this quickly, that they may be unable to control the maturation of noncriminal justice outsourcing. Mr. Kirkpatrick suggested that it would be a good idea for the Council to communicate with TSA as to what is currently authorized for outsourcing.

Compact Council Action: Mr. Frank Sleeter, Sun-Prairie Police Department, made a motion that the Chairman of the Compact Council write a letter to TSA formally notifying them what the current regulations and laws are regarding privatization in terms of outsourcing. (See Attachment 5) The motion was seconded by Mr. David Sim. The motion carried.

Topic #6 **The FBI Conducted a Study to Examine Why Ten-Print Fingerprint Submissions are Rejected.**

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented this topic. He reported that it was the consensus of the Standards Committee that this type of reporting to the states was very beneficial but could be of more use if the device from which the error originated was identified. He explained that there may be multiple devices using the same ORI number. Thus, as they are all originating from the same agency, it is often difficult to pinpoint the source of error in order to take corrective action. Other than that comment, the Standards Committee concurred with the Interstate Identification Evaluation Task Force and the APB's Identification Services Subcommittee.

Mr. Todd Commodore, FBI Compact Council Officer advised that a letter is forthcoming from the FBI explaining that agencies can request a monthly reject report from their CJIS Wide Area Network (WAN) connections. He also stated that in regarding to the importance of fingerprint capture devices, a contributor letter dated February 2002 was sent from the FBI to users to educate them on the importance of populating the image/equipment capture field. (See Attachment 6).

Compact Council Action: This topic was accepted as information only.

Topic #7 **Change Management for Standardized Rap Sheet**

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented this topic. He explained that this issue initially arose from a discussion about adding Wanted Person information to III responses. Once this occurs according to Lt. Col. Harmon, the Joint Task Force (JTF) would need to look at making modifications to the standardized rap sheet to accommodate this information. Originally the focus was on developing the standardized rap sheet and little consideration was given to maintaining it and moving forward with it. As more and more states utilize these systems, it becomes a very complex process to make changes to the standards, to accept the dates by which changes need to be made, and to ensure that they are included in the standard so that requirements are not overlooked.

Compact Council Action: Lt. Col. Jeff Harmon made a motion that Chairman Wilbur Rehmann communicate to the chair of the Joint Task Force on Rap Sheet Standardization, the Compact Council's support of JTF's efforts to formalize a change management process for the standardized rap sheet. Mr. David Sim, Kansas Bureau of Investigation, seconded the motion. The motion carried.

Topic #8 **Discussion of the Draft Compliance (Sanctions) Rule**

Ms. Donna Uzzell, Sanctions Committee Chair, presented this topic. Ms. Uzzell provided an update on the suggested changes which were based on the comments from the DOJ Office of Legal Policy and Office of Legal Counsel, the FBI Office of General Counsel (Administrative Law Unit and Access Integrity Unit), and the CJIS Audit Staff regarding the Compact Council Procedures for Compliant Conduct and Responsible Use of the Interstate Identification Index (III) System for Noncriminal Justice Purposes. Listed below are the Committee's recommendations as covered by Ms. Uzzell.

1. Add language to the preamble explaining the Council's authority to impose sanctions. Use language from Article VI and XI of the Compact.
2. Add the following language to the preamble regarding audit assistance from the FBI that is contemplated in the rule:

Compact Article VI(f):

"The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under the Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.";

Compact Article III(a)(1)(b):

"The Director of the FBI shall ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A)."; and

42 United States Code §14615:

"All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take other actions as may be necessary to carry out the Compact and this subchapter."

3. Add the following language to the preamble:

“The Compact requires the FBI Director to ensure that federal agencies comply with rules, procedures and standards established by the Compact Council but does not directly address the FBI’s responsibility to ensure state compliance. The Act adopting the Compact, however, provides that all United States departments and agencies shall ‘enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes.’ Pursuant to this direction and authority, the FBI has agreed to also conduct audits of state users of the III for compliance with the Compact and Compact Council rules.”

4. Modify 905.3 (a), second paragraph, as follows:

The reviews may consist of systematic analysis and evaluations, including on-site investigations, and shall be as comprehensive as necessary ~~to establish compliance with the Compact and with III System rules, procedures and standards, or to establish that a violation has occurred.~~ to adequately ensure compliance with the Compact and Compact Council rules.

5. Modify 905.4 (b) as follows:

If the Compact Council agrees with the Committee’s finding, ~~it shall direct~~ the Compact Council Chairman ~~to request~~ **shall direct** the FBI Compact Officer to take appropriate action to suspend noncriminal justice access to the III System by the offending agency.

6. Modify p. 5 of the Preamble as follows:

An ~~independent~~ audit team will be established **by the Compact Council** to conduct periodic reviews of the FBI and agencies that submit record check requests to the FBI under federal authority. Also delete the word “independent” from the phrase “independent audit team” where it appears in the rule.

Ms. Uzzell stated that there were other non-substantive changes, regarding changing some words to comply with the way a rule would be written. There was a suggestion by the DOJ that too many parts were added. Ms. Uzzell also mentioned that there needs to be a meeting between the Compact Council Sanctions Committee and the APB Sanctions Subcommittee in order to establish a way to handle situations where a criminal justice agency has misuse that falls on the noncriminal justice side. According to Ms. Uzzell, it is the intention of this rule that when clear noncriminal justice access occurs, and that would most likely be by noncriminal justice agencies accessing the system for noncriminal justice purposes, that the Council will exercise its authority to go through the process and start any necessary sanctions to those offending agencies.

Ms. Uzzell thanked the members of the committee and Mr. Michael Kirkpatrick and his staff, for all of the work that they contributed on the Sanctions Rule. The rule will be reviewed with the revised changes at the next Compact Council meeting.

Compact Council Action: *This topic was accepted as information only.*

Topic #9 **Comments Received on the Proposed Dispute Adjudication Rule**

Chairman Wilbur Rehmann presented this topic. During a recent teleconference, the Dispute Adjudication Committee addressed comments from the FBI CJIS National Instant Background Check System (NICS) and from the Florida Department of Law Enforcement (FDLE). Chairman Rehmann discussed each comment and the Committee's response as covered in the handout, (**See Attachment 7**). The Council agreed with the Committee's recommendations as outlined in the handout except for Comment 2 from the Florida Department of Law Enforcement. The following change was made: The following sentence will be added in section 902.3 (a), in the case when the Compact Council Chair is the committee member with the conflict, the chair shall take appropriate steps to appoint a replacement to resolve the conflict. According to the discussion, the primary reason for the change is to indicate that it is not just a replacement, but a replacement that resolves the conflict.

Mr. Frank Campbell, Department of Justice recommended that the Committee's response to 902.4(b) should be reviewed by the Department of Justice's Office of Legal Counsel to ensure that the verbage change was not binding the Attorney General of the United States.

Compact Council Action: *Ms. Donna Uzzell, FDLE, made a motion to accept the committee responses and recommendations. Mr. Rusty Featherstone, Oklahoma State Bureau of Investigation, seconded the motion. The motion carried.*

Topic #10 **Standards Committee Report on Extending Federal Civil Applicant Background Investigations to Include Use of III for Background Checks on Friends, Relatives, and Associates**

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented this topic. Lt. Col. Harmon explained that this topic had to do with comments that were made by the Standards Committee relative to APB action on extending federal civil applicant background investigations to include the use of III for friends, relatives and associates. The reason this was brought forward was to make the Council aware of the letter that Chairman Rehmann sent to Mr. Michael Kirkpatrick. When the Standards Committee reviewed the paper, they were aware that the APB action would take place prior to the June Compact Council meeting. As a result, the

Chairman, based on the comments from the Standards Committee, forwarded those comments on to Mr. Kirkpatrick so they could be considered by the APB when they took their action. Lt. Col. Harmon further explained that the main points that were made in the letter were that some of the definitions were too broad in nature. The other issue raised was that states are required to respond to authorized noncriminal justice purpose codes. A number of states raised the question about whether or not they would be able to respond to Purpose Code J with this expanded definition. New York and California, which are non-compact states, don't respond to Purpose Code J requests. Therefore, the question becomes if a valid Purpose Code J request is received, is the Compact state bound to respond? By reading the Compact, one would believe the answer is yes. On the other hand, pursuant to state statute, it may be the interpretation of the state that the new definition that was approved by the APB, may, in fact, not fall within the scope of Purpose Code J.

Chairman Rehmann concluded this topic by stating that the Standards Committee may want to consider further discussion on this topic.

Compact Council Action: *This topic was accepted as information only.*

Topic #11 **Standards Committee Report on the Expansion of the Criminal History Record Information (CHRI) Review and the National Fingerprint File (NFF) Audit to Incorporate the Services and Functionality of the Integrated Automated Fingerprint Identification System (IAFIS)**

Mr. Todd Commodore, FBI Compact Officer, presented this topic. This topic originated in San Diego with the CJIS Audit Unit being tasked to develop and implement an audit to accommodate the procedures and services that IAFIS provides. Through research and contact with control terminal agencies, state ident bureaus and local agencies, it was determined that the best way to accomplish this was to build it into the existing audit framework, which is the CHRI review and NFF audit. The primary addition to the audits will be a sampling of the noncriminal justice submissions, particularly the reason fingerprinted field. This moves towards the FBI's migration to an automated quality control (QC) environment. Mr. Commodore stated that this addition will not take place until the FBI implements procedures to accommodate that APB mandate. Currently, the FBI is in the process of developing a concept of operations (CONOPS) for a "lights out" QC environment. Once completed, the FBI will forward the CONOPS to the APB and the Compact Council respectively for their consideration.

Compact Council Action: *This topic was accepted as information only*

Topic #12 **Standards Committee Report on the Methodology of the Noncriminal Justice Agency Audit**

Lt. Col. Jeff Harmon, Standards Committee Chairman, presented this topic. The CJIS Audit staff prepared a paper for the Standards Committee to review regarding the establishment of noncriminal justice agency audits. Overall, the Standards Committee felt that the paper referenced what seemed to be audits of the end user or the authorized recipient of the record by the CJIS audit staff. The Standards Committee felt that the audit staff would be auditing the performance of the state, the Compact Officer, or the head of the repository in fulfilling their duties. Additionally, the Audit staff would sample the activity of the authorized recipients to gauge the performance of the state. Consequently, the overall performance and activities of the authorized recipients of the state would be the responsibilities of the Compact officer or the repository. Lt. Col. Harmon also explained that in general terms, there are currently two rules. 1.) There must be an authorized purpose to have access to the records and 2.) No re-dissemination. Clear communication of whatever standard is being used is necessary. The main focus of the discussion dealt with the fact that states currently do not have noncriminal justice audit programs in place; therefore, there could be significant fiscal impacts to the states depending on the audit requirements.

Ms. Robin Stark, FBI CJIS Audit Unit stated that they plan to educate the states on the new noncriminal justice audit requirements. They plan to conduct mock audits to first educate the states. Additionally, these audits will be non-sanctionable until a final decision on the privatization and outsourcing from the Compact Council is determined.

Ms. Donna Uzzell, Sanctions Committee Chair provided the Council with the Sanctions Committee's report on this topic. She stated that the Sanctions Committee had concerns about the fiscal issues that would be involved in setting up a system for noncriminal justice audits at the state level. They also felt that the information sharing should go through the state CTOs for dissemination down to the end users. The last issue was that the recommendation of the APB Security and Access Committee should apply to a noncriminal justice agency and that background checks may not need to be at the same level as it would be for criminal justice agencies, who have direct terminal access.

Mr. Charlie Pruitt, APB Security and Access Subcommittee Chairman, reported that the Security and Access Subcommittee would address any issues that needed to be reviewed. Secondly, Subcommittee members were not trying to place any undue pressure on the states, but were solely trying to ensure that appropriate security measures were in place.

Compact Council Action: *This topic was accepted as information only*

Topic #13 **Legislative Update**

Mr. Danny Moyer, CJIS Access Integrity Unit presented this topic. Mr. Moyer provided an overview of some of the new federal legislation, introduced in the 108th Congress, that may have an impact on the CJIS Division and its user community. Mr. Moyer deferred the first topic “National Child Protection and Volunteers for Children Improvement Act of 2003” to Mrs. Kimberly Smith, who is scheduled to present an overview in Topic #14. Next, he discussed the Private Security Officer Employment Authorization Act of 2003. According to Mr. Moyer, this act would permit fingerprints to be submitted through state identification bureaus to the FBI for a background check of private security officers. A state may decline to participate in the background check system by enacting a law or an order issued by the Governor stating their intent. Mr. Moyer then mentioned the Foster Care Mentoring Act of 2003 and then reported on the Federal Facilities Locksmith Services Act of 2003, which would require locksmiths at executive and judicial branch facilities to undergo state and national criminal history background checks. He then explained the Energy Policy Act of 2003, which would require each individual transferring or receiving nuclear materials to be subject to a federal background check. Next, The Iris Scan Security Act of 2003 is a program that would provide grants to law enforcement agencies to use iris scanning technology to conduct background checks on individuals who want to purchase guns. Lastly, he discussed the Second Chance for Ex-offenders Act of 2003. This act would permit expungement of a federal record for certain nonviolent offenses upon the satisfaction of certain conditions.

Mr. Moyer then provided an update on the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act. According to Mr. Moyer, a MOU was signed in May 2003 between the FBI and the Department of State. As a result of that MOU, the FBI has provided about 7 million extracts from the III file and approximately 425,000 extracts of name and descriptive data from the foreign fugitive file and Violent Gang and Terrorist Organization File (VGTOF). An update of this information is provided to the Department of State on a monthly basis. Mr. Moyer mentioned that criminal history record information is not provided to the Department of State without fingerprint submissions. Mr. Moyer stated that the Department of State is pleased with the information that was provided to them.

Compact Council Action: *This topic was accepted as information only.*

Topic #14 **Status Update on the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003.**

Ms. Kim Smith, Unit Chief, Criminal Information Transition Unit, presented this topic (**See Attachment 8**). She stated that on April 30, 2003, the President signed the PROTECT Act of 2003. Section 108 of the Act requires the Attorney General to establish two pilot programs within

90 days for voluntary organizations to conduct national and state criminal history background checks through a fingerprint check to be conducted utilizing state criminal records and the Integrated Automated Fingerprint Identification System of the FBI. The two pilot programs consist of the State Pilot Program and the Child Safety Pilot Program. On May 9, 2003, a letter was sent from the FBI CJIS Division to all Control Terminal Officers and State Identification Bureaus to obtain interest from states interested in participating in the state pilot program. Tennessee, Virginia, and Montana responded positively that they would participate in the state program. The three volunteer organizations that will participate in both the state program and the child safety program are the Boys and Girls Clubs of America, the National Mentoring Partnerships, and the National Council of Youth Sports. During the state pilot program, any criminal history record information obtained from the state or federal check shall be provided to the State or National Center for Missing and Exploited Children (NCMEC). Either the State or the NCMEC may make the fitness determination and convey the determinations to the volunteer organizations.

Ms. Smith reported that Mr. Allan Nash, from her staff, will be the project manager for this pilot program. She said that the Act also requires the Attorney General to establish an 18-month Child Safety Program that shall provide for the processing of 100,000 fingerprint check requests through the IAFIS of the FBI. The Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports are the three organizations that will be participating in the pilot. The volunteer organizations shall forward to the Attorney General the volunteer's fingerprints and obtain a statement completed and signed by the volunteer.

Following Ms. Smith's presentation, Chairman Rehmann commented that several states are very concerned about both the studies and the eventual outcome of the pilots as all of the states will be facing deadline issues with the Volunteers for Children Act (VCA). Moreover, the question of the studies have an impact on the decisions that Congress makes in terms of future legislation, which will have an impact on all of the states.

Compact Council Action: *This topic was accepted as information only.*

Compact Council Meeting

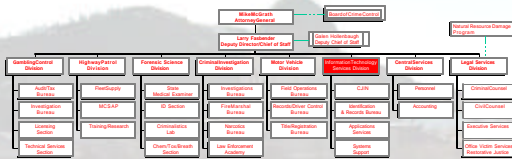
West Yellowstone, Montana

June 24, 2003

Steven Tesinsky, Administrator
Information Technology Services Division
Montana Department of Justice



The Montana Department of Justice



2003 Compact Council

Information Technology Services Division
Montana Department of Justice

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Department of Justice Information Technology Services Division

- Criminal Justice Information Services Bureau
 - CJIS Training, Audit & Policy Section
 - Criminal Records and Identification Services Section
 - Justice Users Help Desk
- Applications Services Bureau
 - MVD Support Services
 - CJIS Support Services
 - Special Projects Support Services
- Support Services Bureau
 - System Support Section
 - Internal Support Section

2003 Compact Council

Information Technology Services Division
Montana Department of Justice

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Criminal Records and Identification Services Section



Fingerprint Cards

Law Enforcement
Dept. of Justice
Non-criminal justice entities
**28,510 Fingerprint Cards
Processed in 2002**



"Green Sheets"

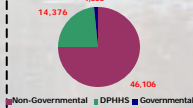
Prosecutors
Courts
**15,362 Dispositions
Processed in 2002**



Requests for background checks

61,482 Processed in 2002
Non-criminal justice entities

Name-Based Background Checks - 2002

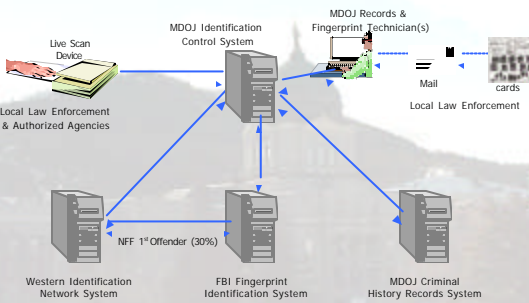


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Fingerprint Checks



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Montana Department of Justice

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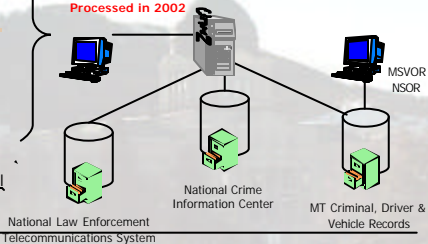
CJIS Training, Audit & Policy Section

Criminal Justice Information Network

**16,363,114 Transactions
Processed in 2002**



Criminal



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6

DOJ-ITSD Support Summary

A Diverse Set Of Stakeholders

- ✓ Citizens of the State of Montana
 - Driver Licenses
 - Motor Vehicle, Titles and Registrations
- ✓ Judicial System, Prosecutors, Defense Attorneys, Judges
- ✓ Sexual and Violent Offender Registry (State & National) Users
- ✓ Department of Justice
 - 713 employees, 14 local area networks, numerous DOJ specific computer systems
- ✓ Montana's most vulnerable citizens
 - Daycare, Nursing Homes, Foster Care
- ✓ Local and national law enforcement (Police/Sheriffs/US Military/FBI/INS)
 - Over 1800 peace officers throughout Montana
 - Over 130,000 criminal justice agencies nationwide
- ✓ Public safety, criminal investigations, officer safety, wants/warrants.
- ✓ Disaster and Emergency Services
 - We are an integral component of the State DES plan

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Information Technology Services Division
Montana Department of Justice



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Our Customer's Future Is Today's Challenge

- ✎ Immediate patrol car access to critical information
- ✎ Speedier response to background and fingerprint check requests
- ✎ Efficient access to external critical information (FBI, other states, etc.)
- ✎ Support of the increasing information needs of authorized non-criminal justice entities
- ✎ Timely and accurate cross-agency data sharing (e.g. courts, prosecutor, local law enforcement)
- ✎ An even greater emphasis on information security and privacy

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Montana Department of Justice



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Notable Activities Currently In-Process

- ✓ Montana Amber Alert System Upgrades
- ✓ Formalizing Montana's Non-Criminal Justice Use of Criminal Justice Information
- ✓ Motor Vehicle Division Support
 - DL, Vehicle Titling & Registration Improvement Project
 - Improved registration receipt process
 - Bankruptcy trustee on-line access
- ✓ End-to-End Fingerprint Processing
- ✓ Universal Latent Workstation
- ✓ Driver's License Photo Availability
- ✓ Montana Criminal Justice Information System Project

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Montana Department of Justice



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**COMPACT COUNCIL MEETING
WEST YELLOWSTONE, MONTANA
JUNE 24-25, 2003**

GALLERY ATTENDEE LIST

Ms. Lana Adams, Office of Personnel Management
Mr. Jeffrey Adler, Office of Personnel Management
Ms. June Baker, Missouri State Highway Patrol
Ms. Paula Barron, FBI CJIS
Ms. Evelyn Best, Metropolitan Police Department
Ms. Deborah Browning, Defense Security Service
Mr. Michael Cahn, Structured Decisions Corporation
Mr. Frank Campbell, U.S. Department of Justice
Ms. Brenda Caudill-Barnes, Kentucky State Police
Ms. Debbie Chapman, FBI CJIS Division
Mr. Todd Commodore, FBI CJIS Division
Mr. Gary Cooper, SEARCH Group, Inc.
Ms. Elaine Cropper, Cropper and Associates
Mr. Ken Cropper, Dollar Financial Group
Mr. William Dove, Sylvan/Identix
Mr. Wayne Eaton, Sagem Morpho, Inc.
Ms. Jeri Eaton, King County Sheriff's Office
Mr. Larry Fasbender, Montana Department of Justice
Ms. Rebecca Gowen, Maryland Department of Public Safety and Correctional Services
Mr. Jim Gray, FBI Headquarters
Mr. Ron Hawley, SEARCH Group, Inc.
Mr. Robert Holloran, National Background Data, LLC
Ms. Janet Jessup, Northrop Grumman
Mr. Eric Juttelstad, Lockheed Martin Information Systems
Ms. Lori Kemp, FBI CJIS Division
Mr. Maurice King, Washington State Patrol
Ms. Susan Kitchen, Colorado Bureau of Investigation

Mr. Eric Lapp, National Background Check, Inc.

Mr. Robert Last, FBI CJIS Division

Ms. Julie LeTourneau, Minnesota Bureau of Criminal Apprehension

Ms. Angell Magnani, Iowa Department of Public Safety

Mr. Tamaalemalo Mauga, American Samoa Government

Mr. Robert McKeever, Maryland Department of Public Safety and Correctional Services

Mr. Danny Moye, FBI CJIS Division

Mr. Vincent Nelson, Hawaii Criminal Justice Data Center

Mr. Patrick Nomura, American Samoa Government

Ms. Ronda Nunnally, Metropolitan Police Department

Ms. Kimberly Parsons, FBI CJIS Division

Mr. Mike Pearson, Smiths Heimann

Mr. Charlie Pruitt, Arkansas Crime Information Center

Mr. Marcel Reid, Illinois State Police

Mr. Daryl Riersgard, Nevada Department of Public Safety

Ms. Pam Ritchey, Iowa Division of Criminal Investigation

Ms. Andree Rose, PERSEREC

Ms. Carole Shelton, Maryland Department of Public Safety and Correctional Services

Ms. Kimberly Smith, FBI CJIS Division

Ms. Robin Stark, FBI CJIS Division

Mr. Monte Strait, FBI CJIS Division

Mr. Steven Tesinsky, Montana Department of Justice

Mr. Richard Thomas, Arkansas Crime Information Center

Mr. Michael Timmerman, Arizona Department of Public Safety

Mr. Peseta Tuiteleapaga, American Samoa Government

Mr. T.W. Turner, Virginia State Police

Ms. Barbara Wiles, FBI CJIS Division

Mr. Jon Williams, FBI CJIS Division

Mr. Paul Woodard, SEARCH Group, Inc.

Mr. Michael Woodson, Connecticut Department of Public Safety

State Qualification Requirements/Audit Criteria

In order to participate in the NFF, a state must first be capable of III participation. A state which joins the NFF subsequent to the enactment of the National Crime Prevention and Privacy Compact Act of 1998 must be a signatory to the Compact. The following NFF Qualification Requirements are written to include and augment the minimum standards for III participation.

I. Fingerprint Identification Matters

- A. An NFF state shall maintain a central criminal history record repository with full technical fingerprint search capability. An NFF state shall perform technical searches¹ on both applicant and arrest fingerprint impressions prior to their submission to the Federal Bureau of Investigation (FBI). When an individual is identified at the state level as having records previously indexed in the National Identification Index, the NFF state shall notify the contributor of the search results and provide the criminal history record information if requested on the fingerprint submission.

Criterion

Determine if the State Identification Bureau (SIB) performs technical searches on arrest and applicant fingerprint submissions. Review the fingerprint backlogs for both criminal and civil prints. Review the number of staff involved in the processing of fingerprints and the education and training requirements associated with each position related to fingerprint processing.

Criterion

Review the record requests generated within the state for noncriminal justice purposes such as licensing and employment, including to whom the record was disseminated. This review may be conducted through evaluation of the transaction log and case files maintained by the state.

- B. An NFF state shall collect and maintain any appropriate criminal history record information, including dispositions, sealing orders, and expungements, relevant to each offender and the records maintained by that state.

Criterion

Determine that the state central criminal history record repository functions in the capacity of maintaining and providing a sole point of access to all reported criminal history record

¹ A technical search may consist of a name search with candidate verification by fingerprint comparison; short of that, a manual or AFIS search of the state master fingerprint file is required.

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information (i.e., arrests, dispositions, sealing orders, and expungements).

- C. An NFF state's central criminal history record repository shall serve as the sole conduit for the transmission of non-Federal applicant² and arrest fingerprint impressions³ for criterion offenses within the state to the FBI (single source submission).

Criterion

Review the number of fingerprint submissions rejected by the FBI monthly for each of the following reasons: (1) fingerprint submission had not been processed through the state central criminal history record repository; (2) fingerprint submission was missing other required information; or (3) other. Based on a representative sample, calculate the percentage of fingerprint submissions rejected.

- D. The total percentage of IAFIS system rejects due to low image quality on arrest fingerprint submissions shall be less than 0.5% of the total arrest fingerprint submissions. The total percentage of service provider rejects due to insufficient, indiscernible, erroneous or incomplete arrest fingerprint image submissions shall be less than 5%.

Criterion

The percentage for IAFIS system rejects (L008) shall be less than 0.5%. The total combined percentage of service provider rejects (L0116, L0117, and L0118) shall be less than 5%.

- E. An NFF state shall not forward arrest fingerprint impressions nor related information for individuals identified at the state level as having records previously indexed in the National Identification Index as NFF records with the State Identification Number (SID). Errors resulting from forwarding fingerprint submissions for previously indexed NFF records shall be less than 2% of the total arrest fingerprint submissions.

Criterion

Review the number of Previously Established Single Source (\$.A.PES) and Previously Established Multiple Source (\$.A.PEM) record messages sent to the state monthly. Based on a

²

A state may also at its discretion consent to process federal fingerprint submissions through the repository in which such request originated. See Compact Article V (c).

³Arrest fingerprint impression may include a fingerprint submission that supports or is linked to an arrest event (i.e. includes corrections.)

representative sample, calculate the monthly percentage of PEM+PES messages. The total shall be less than 2% of the total arrest fingerprint submissions.

- F. An NFF state participant shall continue submitting criterion arrest fingerprint impressions and related information for individuals for whom primary identification records were established by the FBI prior to the state's becoming an NFF participant and which are not identified by SIDs in the National Identification Index by the state or are FBI nonautomated identification records. (i.e. the state has not taken responsibility for managing or controlling the III record)
- G. Arrest fingerprint impressions shall be forwarded to the FBI within two weeks of receipt at the state central criminal history record repository.

Criterion

Based on a representative sample, verify whether fingerprints are being submitted to the FBI within two weeks of receipt at the state central criminal history record repository .

- H. An NFF state's central criminal history record repository shall maintain the subject's fingerprint impressions, or copies thereof, to support each Index record and shall maintain fingerprint impressions, or copies thereof, supporting each arrest event in each such criminal history record.

Criterion

Verify that all arrest events included in the criminal history record are directly linked to a fingerprint impression(s).

- I. The arrest master fingerprint impressions maintained at the state central criminal history record repository shall include all ten fingers, noting amputation(s), scars, or missing fingers.

Criterion

Based on a representative sample of criminal history records determine that a master ten-print, noting amputation(s), scars, or missing fingers is maintained for the record subject.

- J. Additional/(subsequent) arrest fingerprint impressions maintained at the state central criminal history record repository to support individual arrest events may include less than all ten fingers.

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- K. An NFF state shall submit to the FBI arrest fingerprint impressions containing a unique SID for each individual. The number of fingerprint submissions that contain nonunique SIDs shall be less than 0.25% of the total arrest fingerprint submissions.

Criterion

Review the number of SID Rejected - No Prior Record (\$.A.RNP)/SID Rejected - Prior Record (\$.A.RPR) messages sent to the state monthly. Based on a representative sample, calculate the monthly percentage of RNP/RPR messages sent. The percentage should be less than 0.25% of the total arrest fingerprint submissions.

- L. Missed identifications by the state's central criminal history record repository resulting in the issuance of multiple SIDs for the same individual shall be less than two percent of total arrest fingerprint submissions.

Criterion

Review the number of Non-Matching SID (NMS) messages sent to the state monthly. Based on a representative sample, calculate the monthly percentage of NMS messages sent. The percent should be less than 2.0%.

- M. The state shall ensure that an SID is on each arrest fingerprint impression not identified at the state level and submitted to the FBI for establishment of an NFF record.

Criterion

Review the number of fingerprint submissions rejected by the FBI monthly for the following reason: (1) submission had no SID indicated.

- N. In those instances when the fingerprint submission includes a request for the rapsheet and/or the results of the search, an NFF state shall either receive and forward electronic messages concerning the result of FBI fingerprint impression processing to its fingerprint contributors or shall print and mail these results.⁴

⁴There are three options presently available for receiving responses for applicant processes. The state may utilize: the electronic unsolicited III message reporting the results of applicant fingerprint processing (\$.A.CFN, \$.A.CFR); the IAFIS Submission Results (SRE) response which provides the identification results as communicated over the CJIS Wide Area Network; or the IAFIS System Type of Transaction which generates a manual response to an electronic fingerprint submission (NFFC).

Criterion

Review the method of disseminating the results of FBI fingerprint impression processing to local fingerprint contributors.

II. Record Content and III Maintenance

- A. For each NFF record maintained, the state's central criminal history record repository shall contain all known fingerprint-based arrests, final dispositions and custody/supervision actions occurring in that state which are reported to the state central criminal history record repository pursuant to applicable federal or state law.

Criterion

Review the entire disposition and custody/supervision reporting process and determine that each subsequent event resulting from an arrest can be linked in some unique manner to the specific arrest for which it applies.

- B. An NFF state shall remove the SID from a III record when corresponding record data no longer exists at the state level.

Criterion

Review the state's expungement processing. Is the removal of SIDs from the III, when a state record is purged or expunged in total, an automated process? If not, determine what precautions are taken to ensure that the SID is removed from the III when corresponding record data no longer exists. Additionally, verify that Expungement/Purge (DRS) messages are queued or written to tape when the FBI is in restricted service or out of service and subsequently transmitted to the FBI.

- C. An NFF state shall conduct an audit of III record synchronization with the FBI at least twice a year to identify, analyze, and correct record discrepancies within 90 days of audit tape receipt from the FBI. An NFF state shall maintain the discrepancy reports resulting from the last two synchronization tapes.

Criterion

Verify that states maintain the discrepancy reports. Based on a representative sample from the discrepancies noted in the report, verify that the state has conducted, as a minimum, biannual synchronization audits of III records, and discrepancies have been corrected/resolved within 90 days of tape receipt from the FBI.

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- D. Record completeness, accuracy, and timeliness shall be considered by an NFF state to be of primary importance and shall be maintained at the highest level possible.

Criterion

Review the mechanisms employed by the state to assure the accuracy, completeness, and timeliness of information maintained in its database.

- E. When a second and/or subsequent criterion arrest criminal fingerprint impression is identified with an Indexed record by an NFF state, the state shall send an electronic Criminal Print Identified (CPI) message to the FBI, no later than twenty-four hours after the arrest is posted within the state's central criminal history record system.

Criterion

At random, select a 24-hour period during the week prior to the audit. Review a representative sample of CPI messages and the criminal fingerprint submissions received from the state during the specified period. Compare the ratio of data received for the specified period to that of a previously established benchmark for recidivism. Additionally, verify that CPI messages are queued or written to tape when the FBI is in restricted service or out of service and subsequently transmitted to the FBI.

- F. An NFF state shall add supplemental identifiers to Indexed records when a second and/or subsequent criminal fingerprint impression is identified by the state and contains identifiers not previously recorded.
- G. Supplemental identifiers which shall be added to the National Identification Index⁵ include scars, marks, tattoos, dates of birth, Social Security numbers, miscellaneous numbers, and aliases, obtained after establishment of an offender's primary identification record by the FBI.

Criterion

Review a representative sample of CPI messages in comparison to the EHN messages received from the state during the specified period. Compare the ratio of data received for the specified period to that of a previously established benchmark for supplemental identifiers per subject.

- H. An NFF state shall submit arrest fingerprint impressions to the FBI for second and/or

⁵ Supplemental identifiers include all information submitted through an electronic supplemental identifier (\$A.EHN) message.

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subsequent criterion offenses if these fingerprint impressions show new amputations or new permanent scars.

Criterion

Review the state's technique for identifying that second or subsequent arrest fingerprints contain new information such as scars and amputations.

- I. NFF states shall submit ten-finger fingerprint impressions to the FBI as they become available when second and/or subsequent offenses yield improved image quality fingerprint impressions.

Criterion

Review the state's technique for identifying that second or subsequent arrest fingerprints contain improved image quality fingerprint impressions.

- J. Required record file maintenance shall be conducted by NFF state personnel based upon receipt of record File Maintenance message notifications from the FBI via the III interface. File Maintenance messages may include advisories of state/FBI missed identification or expungements of the state SID. The state shall conduct consolidations within two business days of notification; other file maintenance shall be conducted within seven business days.

Criterion

Review a representative sample of file maintenance messages such as FBI Number Consolidation (\$A.CON) or SID Number Expunged (\$A.EXS) or FBI Number Expunged (\$A.EXP) sent to the state. Review the state records to determine if the appropriate consolidations have been performed within two business days. If consolidations are not performed in a timely manner, the state is required to flag the subject records as undergoing file maintenance until the consolidation can be processed. Review the state records to determine if the SID's and/or FBI numbers are deleted to indicate expungements have occurred within seven business days.

III. Record Response

- A. An NFF state's automated criminal history record system shall have sufficient capability to provide a response time of ten minutes or less.
- B. An NFF state shall respond within ten minutes to III record requests via the National Law Enforcement Telecommunications Systems (NLETS) with the record or an

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acknowledgment and a notice of when the record will be provided.

Criterion

Review a representative sample to determine if the average Criminal History Request (\$A.CHR) response time exceeded ten minutes. Calculate the percentage of responses that exceed ten minutes. Review with the state any extenuating circumstances that may have caused the response delays.

- C. When an NFF state's system cannot provide on-line record responses within ten minutes, the state shall assign personnel as necessary to resolve record processing problems and to restore the system's capacity to provide timely on-line responses.

Criterion

Based on a representative sample, review with the state any periods of System down-time since the last NFF audit. Discuss the cause and resolution of each situation. Verify the time frames needed to assign personnel to resolve system problems.

- D. NFF state record responses shall include literal translations of all alphabetic and/or numeric codes in order that the record responses can be readily understood.

Criterion

Based on a representative sample, review state record responses to ensure that literal translations of all alphabetic and/or numeric codes are included.

- E. An NFF state shall not include in its III record response any out-of-state and/or federal criminal history record information maintained in its files.

Criterion

Review whether the state maintains out-of-state and/or federal criminal history record information, and if so, how the state segregates this information to prevent the out-of-state and/or federal information from being issued in a response to a III inquiry.

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- F. An NFF state's central criminal history record repository shall provide its indexed criminal history records in response to all authorized requests⁶ made through the NFF and III for criminal justice purposes and, when based on positive identification,⁷ for noncriminal justice purposes as authorized by the Compact.

Criterion

Based on a representative sample, determine if the state is responding appropriately to all authorized purpose codes and is not responding to ORIs that are not authorized to gain access for certain purposes (For example, "D" ORIs are limited to Purpose Code D inquiries only). System responsiveness may be monitored by initiating III inquiries by specific purpose code and ORI.

- G. In responding to a III record request for a noncriminal justice purpose, an NFF state shall provide the entire record it maintains on the record subject, except for information that is sealed in accordance with the definition of "Sealed Record Information" set out in Art. I (21) of the Compact.

Criterion

Based on a representative sample, review state records to see if records are sealed and disseminated properly.

IV. Accountability

- A. In NFF states that have ratified the National Crime Prevention and Privacy Compact, the Compact Officer shall be responsible for ensuring that these qualification requirements are complied with⁸.
- B. In the event a state ceases to participate in the NFF for any reason, the state shall reasonably assist the FBI in reconstructing any fingerprint and arrest/disposition record

⁶ The current list of authorized users and uses of the FBI identification records are attached.

⁷ Responses to III name searches are permitted under the Compact Council Fingerprint Submission Requirements Rule.

⁸ This requirement is inherent in the Compact itself as stated in Article III (b)(1)(B) that the state Compact Officer shall ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with.

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deficiencies that otherwise would have been submitted to the FBI during the state's NFF participation.

- C. An NFF state shall have written procedures requiring thorough testing of upgrades or modifications to its computer system(s) to detect software errors and/or related procedural problems, particularly on-line testing, of these changes to limit adverse effects to the NFF system operations. An NFF state shall demonstrate adherence to the procedures by documenting the test results in writing.

Criterion

Review a representative sample of state system modification/enhancements. Review the test procedures employed prior to implementation of such modifications/enhancements. When appropriate, determine if the FBI was notified that such changes were made.

DRAFT



National Crime Prevention and Privacy Compact

Compact Council Office
1000 Custer Hollow Road
Clarksburg, WV 26306

June 30, 2003

The Honorable Tom Ridge
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Ridge:

I am writing on behalf of the National Crime Prevention and Privacy Compact Council (Compact Council). The Compact Council was established pursuant to the 1998 National Crime Prevention and Privacy Compact cited at 42 U.S.C. 14616. The Compact establishes legal criteria governing criminal history record checks for noncriminal justice purposes.

The purpose of this correspondence is to advise you of the urgent concerns of the Council with the implementation of the interim final rule on Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 49 CFR Parts 1570 and 1572, RIN 1652-AA17, published May 5, 2003.

The states, in anticipating their role in implementing this law, are critically concerned about the fast approaching date set by TSA of November 3, 2003. Although agreements were made for TSA to work with the states and the various other interested parties, no substantive activities have occurred thus far. For the states to be prepared to perform their part of this Act, it is imperative that these meetings to determine and communicate the responsibilities of all parties occur immediately.

On February 25th, the Transportation Security Administration (TSA) submitted a request to the Compact Council seeking approval to access the National Crime Information Center (NCIC) (including the Interstate Identification Index (III)). TSA requested access to the III, on a delayed fingerprint submission basis, so that TSA could conduct name-based criminal history records checks on approximately 3.5 million commercial truck drivers requiring the hazardous material (Hazmat) endorsement. The request was made, via conference call, by Admiral James Loy, TSA's Administrator, Mr. Justin Oberman, TSA's Project Manager, and Mr. Kirk Van Tine, Department of Transportation General Counsel. The Compact Council approved the request with the following concerns and conditions:

1. The request granted was for "delayed fingerprint submission" not a waiver for fingerprint submission. Therefore, TSA would be required to submit fingerprints for every name check conducted.

2. TSA agreed to provide regular briefings to the Compact Council on the process and statistics on the results of the checks.
3. TSA agreed to convene a working group to include representatives from the Compact Council, state central repositories, state department of motor vehicles, members of the FBI CJIS Division and its Advisory Policy Board, SEARCH, the American Association of Motor Vehicle Administrators and the International Association of Chiefs of Police. The group would help define the process for gathering submission of fingerprints as well as processing of results.

The TSA committed to convening the working group and having an infrastructure in place to begin fingerprinting all Hazmat drivers within 180 days of the agreement. In a subsequent meeting on March 13, 2003, TSA changed the original request from 180 days to submit fingerprints on all Hazmat drivers to the following language:

“...within the time period specified in the Interim Final Rule will be required to submit fingerprints in the period between 180 days and 5 (five) years from the effective date of the Interim Final Rule, or when applying for a new or renewed Hazmat endorsement of their Commercial Driver’s License (CDL), whichever occurs first.”

Although, the period of submission of the fingerprints changed, the requirements for an infrastructure implementation and consultation with the appropriate groups did not. TSA and the Compact Council signed the final agreement on March 13, 2003.

The Compact Council has made numerous calls to TSA to get a time frame for the working group and establishment of the process. Although the interim final rule was published on May 5, 2003, TSA has not developed an infrastructure nor established the working group.

Our concerns arise from the fact that a process has not been defined nor action taken regarding the implementation of the rule. TSA has not answered basic questions regarding the requirements that could be placed on local and state jurisdictions regarding taking the fingerprints. The November 3, 2003, time frame is close, yet TSA does not have an infrastructure in place to address the taking of fingerprints nor the adjudication of the III checks.

The Compact Council requests that you take action to ensure that TSA takes the following actions:

1. Convene the working group of interested parties to ensure that all elements and issues regarding implementation of the rule are properly addressed.
2. Ensure proper planning and scheduling with the States and other parties to adequately meet the November 3, 2003 deadline.

TSA must implement a planning process immediately if state and local agencies are expected to assist the federal government in implementing the Patriot Act. The Compact Council would like a response within 30 calendar days. Thank you for your immediate attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wilbur W. Rehmann". The signature is fluid and cursive, with the first name "Wilbur" being more prominent.

Wilbur W. Rehmann
Chairman
National Crime Prevention and Privacy Compact Council

cc: Admiral James Loy, TSA Administrator

Director Robert Mueller, Director of FBI

Ms. Linda R. Lewis, President and Chief Executive Officer, AAMVA

Gary Cooper, Executive Director for SEARCH

Mr. William Casey, CJIS Advisory Policy Board Chairman

Mr. Justin Oberman, TSA

Compact Council members and State Compact Officers

State Control Terminal Officers and State Identification Bureau Chiefs

Compact Liaison Officers



National Crime Prevention and Privacy Compact

Compact Council Office
1000 Custer Hollow Road
Clarksburg, WV 26306

July 8, 2003

Admiral James Loy
U.S. Department of Transportation
Transportation Security Administration
601 S. 12th Street
Arlington, VA 22202-4220

Dear Admiral Loy:

I am writing on behalf of the National Crime Prevention and Privacy Compact Council (Compact Council), which was established pursuant to 42 United States Code (U.S.C.) § 14616 to promulgate rules regarding the use of the Interstate Identification Index System containing criminal history record information (CHRI) for noncriminal justice purposes.

Compact Council and Transportation Security Administration (TSA) representatives have been discussing the implementation of Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, which requires a background check for any individual seeking a Commercial Drivers License with a hazardous materials (HAZMAT) endorsement. In support of that initiative, the Compact Council requested that I bring to TSA's attention the current rules and regulations governing the collection, use, and dissemination of CHRI for this purpose.

While TSA is permitted to outsource the capturing of fingerprints, there are restrictions on the use and dissemination of the results of the criminal history checks. FBI CHRI is collected, maintained, and exchanged under the authority of U.S.C. § 534. The United States Department of Justice and federal courts have interpreted Section 534 to restrict access to criminal justice agencies for criminal justice purposes and to federal agencies authorized to receive CHRI pursuant to a federal statute or executive order. Additionally, Section 534 and 28 Code of Federal Regulations (CFR), § 20.33 provide that the exchange of CHRI is subject to cancellation if dissemination is made outside the receiving departments or related agencies. Therefore, TSA cannot disseminate CHRI or the results of a criminal history record check to a private entity for noncriminal justice purposes.

Although TSA has flexibility in the collection of the fingerprints, if it is your intention to request state assistance in the collection of fingerprints, adequate time must be allotted to coordinate with each state as they are in various stages of readiness to effect this effort. If individual states perform the collection process, the fingerprints will be forwarded by the state's central criminal history record repository to the FBI for processing. Additionally, you may also consider using State's Department of Motor Vehicles to serve as the conduit to TSA or another designated governmental agency.

The Compact Council is in the process of promulgating a rule that will allow third parties to act as agents for both governmental and nongovernmental agencies while performing administrative functions requiring access to CHRI for authorized noncriminal justice purposes. Although the final rule is not expected until sometime next year, once this privatization/outsourcing initiative occurs, TSA and other noncriminal justice users may contract with a private third party for administrative assistance in carrying out its background check responsibilities.

Further, TSA has the authority to maintain a database of applicant revealed information, or information revealed which comes into possession of TSA by independent investigation. However, exporting FBI CHRI to a database to be searched by other agencies/entities or for other purposes is not permissible.

The Compact Council Standards Committee will be meeting in Pittsburgh, PA, August 25-26, 2003 at the Sheraton Station Square Hotel, and I invite you to send a representative to that meeting. The Standards Committee will be discussing the proposed Privatization Rule and Standards for implementation. We welcome the ideas and comments of TSA to that discussion. For additional meeting information, please contact Ms. Kimberly S. Parsons, FBI Meeting Coordinator, at (304) 625-2404.

I look forward to our ongoing collaboration on this issue. If you have any questions concerning this matter, you may contact me at (406) 444-6194 or electronically at wrehmann@state.mt.us.

Sincerely,



Wilbur W. Rehmann
Chairman
National Crime Prevention and Privacy Compact Council

cc: Justin Oberman, TSA
Compact Council Members and State Compact Officers
Compact Liaison Officers
Linda Lewis, AAMVA
Gary Cooper, SEARCH



CJIS Information Letter

February 25, 2002

Use of the 2.067—Image Capture Equipment (IMA) Field

The Criminal Justice Information Services (CJIS) Division and the CJIS Advisory Policy Board strongly encourage all agencies that electronically submit fingerprint cards for processing in the Integrated Automated Fingerprint Identification System (IAFIS) to utilize the 2.067—IMA Field. This free text field enables contributors to provide the make, model, and serial number of the equipment used to acquire fingerprint images. The information in the IMA Field assists the Division in problem identification and resolution.

Reference

Electronic Fingerprint Transmission Specification, Version 7.0, Appendix C, contains information about the 2.067—IMA Field. This free text field is a grouped field consisting of three subfields: Make (MAK), Model (MODL), and Serial Number (SERNO) of the acquisition device separated by the $\frac{U}{S}$ separator character.

Submitting Criminal Fingerprints

The CJIS Division maintains a national criminal history database of criminal history record information supplied by criminal justice agencies and other authorized agencies throughout the Nation. The reason for maintaining this central repository is to facilitate sharing the information with all agencies legally entitled to receive it. The failure of law enforcement agencies to submit felony or misdemeanor arrests in a timely manner may result in incomplete records or erroneous “no record” responses from the database. Missing information not only has negative effects on criminal investigations but may also result in inadequate responses to agencies providing applicant fingerprints for employment or licensing. Firearm purchases requiring screening via the National Instant Criminal Background Check System are adversely impacted as well. While underscoring the importance of sending criminal fingerprints in a timely manner, the Division emphasizes that regardless of the time that may have elapsed since an arrest occurred, it will accept criminal record information.

Topic #9

Comments on the Proposed Dispute Adjudication Rule

The proposed rule was published in the Federal Register on November 25, 2002, (See Attachment 1) with the comment period ending December 26, 2002. In response to the Rule, the Florida Department of Law Enforcement's Office of General Counsel as well as the FBI's National Instant Criminal Background Check System Section forwarded comments for consideration. The Dispute Resolution Committee held a teleconference with FBI staff on Thursday, June 12, 2003, to discuss the comments received on the Proposed Rule. Listed below are each agency's comments by item and the Committee's recommendation.

Comments received from FBI CJIS NICS:

- (1) As provided under Supplementary Information, Ms. Haslebacher would request clarification regarding the Compact eliminating barriers to the sharing of criminal history record information among Compact parties for noncriminal justice purposes. Would it encompass all noncriminal justice purposes or only criminal history record information supported by fingerprint submissions?

Committee's response:

The Compact encompasses all noncriminal justice purposes. This reference is a direct quote from Compact Article VI.

- (2) As stated under Supplementary Information, "Article VI of the Compact provides for the Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with the FBI administration of the III System for criminal justice purposes." Ms. Haslebacher would request verification of the accuracy of the quote provided. Is this an exact quote from Public Law 105-251, Article VI?

Committee's response:

Yes, this is an exact quote from Article VI.

Comments received from Florida Department of Law Enforcement's Office of General Counsel:

- (1) Section 902.2(a) refers to a "government entity **directly aggrieved within the meaning of paragraph (b)**" to define or limit standing to bring a dispute before the Council, but paragraph (b) doesn't define or elaborate on what "directly aggrieved" means, so the reference is circular: "an entity directly aggrieved is one that is directly aggrieved." It shouldn't be hard to find language about concrete injury or substantial interest that would give some content to "directly aggrieved." The phrase does not necessarily have to be defined, but the rule should not purport to define it and then decline to do so.

Committee's response:

Modify Section 902.2(a) as follows:

- (a) Cognizable disputes may be based upon:

Section 902.2(b) is left unchanged. This modification to (a) eliminates the use of and subsequent reference to "directly aggrieved".

- (2) Section 902.3(a): What if the dispute also poses a conflict of interest for the Chair? Could a deputy name the substitute member?

Committee's response:

Yes, as per Council Bylaws Section 7.1, the Vice Chair shall serve as the Chairman in the absence of the Chair.

- (3) Section 902.3(c): "In making a decision as to whether to recommend a hearing, the Dispute Resolution Committee shall **lean toward** recommending hearings to all disputants who raise issues that are not clearly frivolous or without merit." This may have come up before, but I am uncomfortable with the use of a directive as vague as "lean toward." I have never seen this language in a rule as far as I can recall. If the Committee has discretion to deny a hearing, the criteria for its decision should be spelled out. They are already, or almost are. For example, "issues that are not clearly frivolous or without merit" is a criterion, as is "matter does not constitute a cognizable dispute under Sec. 902.2(a)." There is no need to instruct the Committee to "lean toward" recommending a hearing. The rule could state: "If the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing."

Committee's response:

Modify 902.3(c) to read as follows:

The Dispute Resolution Committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit. If the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing.

- (4) Section 902.4(b): "If a hearing is not granted, the Federal Bureau of Investigation or a Party State may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact." As indicated, the Compact Statute limits the right of appeal to the FBI or a Party State. This means a person aggrieved has no recourse if a hearing is not granted. I assume this limitation has been upheld in other contexts.

Committee's response:

Modify 902.4(b) as follows:

(b) If a hearing is not granted, the disputant may appeal this decision to the Attorney General. If the Attorney General believes the disputant has raised an issue that is not frivolous or without merit, the Attorney General shall order the Compact Council Chairman to grant a hearing.

- (5) Section 902.5, Hearing Procedures: Are disputants allowed to cross-examine witnesses, and introduce evidence at the hearing? Any way to compel the attendance of witnesses or production of documents? Are there any restrictions on a disputant acting as his/her own attorney?

Committee's response:

Modify 902.5(c)(4) as follows:

(b) Call and cross-examine witnesses.

There is no way to compel the attendance of witnesses or production of documents and there are no restrictions on a disputant acting as his/her own attorney.

- (6) Section 902.5(e): "All Council members, **including a member or members who raised the dispute** that is the subject of the hearing, shall be entitled to participate fully in the hearing and **vote on the final Council decision** concerning the dispute." Isn't this a conflict of interest? It may not be, but a word of explanation is in order. (An agency head can issue a final decision in a dispute involving his/her agency under administrative law, but a hearing officer could not preside over a hearing in which he or she had a personal interest.)

Committee's response:

Modify 902.5(e) as follows:

All Council members, except a member who raised the dispute that is the subject of the hearing or is employed by the agency that raised the dispute, shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

- (7) Section 902.5(h): "The proceedings of the hearing shall be recorded and shall be transcribed, as necessary." Does this mean that recording and transcription may or may not be necessary, or that recording is always required?

Committee's response:

Modify 902.5(h) as follows:

The proceedings of the hearing will be recorded and, as necessary, transcribed. A transcript of the hearing shall be made and forwarded to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.

- (8) Section 902.5(i): "The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present and voting at the hearing." Is a quorum necessary? Otherwise, what is to prevent one (or at most two or three) members from making up the hearing board by default? What is a majority in the event of a tie vote?

Committee's response:

Modify the first sentence of 902.5(i) as follows:

The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws Section 8.8) and voting at the hearing.

- (9) Was this rule modeled after any existing precedents, and have those models been tested in court?

Committee's response:

The Council structured the rule according to current administrative procedures, but the rule is not modeled after an existing precedent.

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NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 902

[NCPCC 102]

Dispute Adjudication Procedures

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing a rule proposing to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

DATE: Submit comments on or before December 26, 2002.

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Cathy L. Morrison. Comments may also be submitted by fax at (304)625-5388 or by electronic mail at cmorriso@leo.gov. To ensure proper handling, please reference ``Dispute Adjudication'' on your correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Rehmann, Compact Council Chairman, Montana Department of Justice, 303 North Roberts, 4th Floor, Post Office Box 201406, Helena, Montana 59620-1406, telephone number (406) 444-6194.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-14616, establishes uniform standards and processes for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999, when ratified by the second state. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

This proposed rule establishes Dispute Adjudication Procedures

authorized under Article XI of the Compact. Article XI provides generally for the adjudication of disputes relating to the Compact and this rule provides a structured framework for the Council to efficiently and effectively implement the adjudication process.

Section 902.2(a) of the proposed rule provides that cognizable disputes may only be raised by a person or organization directly aggrieved by: (1) The Council's interpretation of the Compact; (2) any rule or standard established by the Council pursuant to the Compact; or (3) failure of a Compact Party to comply with a provision of the Compact or with any rule or standard established by the Council. Limiting disputes to those who are ``directly aggrieved'' by Council or Compact Party actions ensures that Council resources are devoted to reviewing substantive matters relating to direct Council or Compact Party actions and that standing is provided only to a person or organization substantially impacted by relevant actions of the Compact Council or a Compact Party.

Section 902.2(d) of the proposed rule provides that a dispute may not be based solely upon a disagreement with the merits of a rule or standard established by the Council. If a rule has been established by the Council, the Council has provided an opportunity for comments through the publishing of a proposed rule, has debated the merits and wisdom of the rule at meetings open to the public, and has determined that the rule should be enacted. Prior public notice is given in the Federal Register of each Council meeting, including the matters to be addressed at the meeting. Therefore, the public will have prior notice of the proposed rules to be discussed by the Council and will have an opportunity to comment on the merits of the proposed rules. Accordingly, prohibiting disputes based on the merits or wisdom of a Council rule ensures that Council time and resources are not spent adjudicating disputes in matters in which the Council has already invested significant time and effort and on which interested parties have had ample opportunity to comment. However, while a formal dispute on the merits of a rule may not be raised under these procedures, nothing prevents further discussion of the merits of the rule or efforts seeking its revocation at regularly scheduled Council meetings.

Section 902.3 of the proposed rule provides that disputes are preliminarily referred to the Council's Dispute Resolution Committee for a recommendation to the Council Chairman regarding whether a hearing should be held on the matter. Creating and utilizing a Dispute Resolution Committee enhances efficiency by having a small group assess pertinent information and make recommendations to the Chairman and full Council.

The hearing procedures provided for in the proposed rule ensure that disputants, as well as Compact Parties charged with violating Council rules, are given a full and fair opportunity to present matters to the Council both orally and in writing. Due to the Council's historically busy agenda and the costs involved in assembling the 15-member Council and its administrative support, the Council Chairman may limit the number of and the length of time allowed to presenters or witnesses. The Chairman also maintains the discretion to limit input, both orally and in writing, of other persons or organizations who may wish to participate in an adjudication proceeding.

Given the affected interests of the Compact Council, the proposed rule requires that appropriate notice of an appeal under Article XI be communicated to the Council Chairman by the appealing party to ensure that timely notice is provided to Council members and other appropriate individuals.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the Federal Register. See 42 U.S.C. 14616, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

[[Page 70568]]

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a ``Federal agency'' as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 902

Administrative practice and procedure, National Crime Prevention

and Privacy Compact Council.

Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 902 to read as follows:

PART 902--DISPUTE ADJUDICATION PROCEDURES

Sec.

- 902.1 Purpose and authority.
- 902.2 Raising disputes.
- 902.3 Referral to Dispute Resolution Committee.
- 902.4 Action by Council Chairman.
- 902.5 Hearing procedures.
- 902.6 Appeal to the Attorney General.
- 902.7 Court action.

Authority: 42 U.S.C. 14616.

Sec. 902.1 Purpose and authority.

The purpose of this part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616.

Sec. 902.2 Raising disputes.

(a) Cognizable disputes must be raised by a Party State, the FBI, or a person, organization, or government entity directly aggrieved within the meaning of paragraph (b) of this section and may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) A Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Sec. 902.2(a)(4), may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly

scheduled Council meeting.

Sec. 902.3 Referral to Dispute Resolution Committee.

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) In making a decision as to whether to recommend a hearing, the Dispute Resolution Committee shall lean toward recommending hearings to all disputants who raise issues that are not clearly frivolous or without merit.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under Sec. 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

Sec. 902.4 Action by Council Chairman.

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the Federal Bureau of Investigation or a Party State may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact (see Sec. 902.6).

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under Sec. 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

Sec. 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of Sec. 902.2(a)(4) shall be entitled to:

[[Page 70569]]

- (1) File additional written materials with the Council at least ten days prior to the hearing;
 - (2) Appear at the hearing, in person and/or by counsel;
 - (3) Make an oral presentation; and
 - (4) Call witnesses.
- (d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.
- (e) All Council members, including a member or members who raised the dispute that is the subject of the hearing, shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.
- (f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.
- (g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.
- (h) The proceedings of the hearing shall be recorded and shall be transcribed, as necessary. A record of the proceedings will be made and provided to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.
- (i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present and voting at the hearing. The Council's decision on the dispute shall be published in the Federal Register as provided by section (a)(2) of Article XI and section (e) of Article VI.
- (j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by section (c) of Article XI of the Compact.

Sec. 902.6 Appeal to the Attorney General.

- (a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to section (c) of Article XI of the Compact.
- (b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.
- (c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

Sec. 902.7 Court action.

Pursuant to section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under Sec. 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

Dated: November 1, 2002.
Wilbur Rehmann,
Compact Council Chairman.
[FR Doc. 02-29709 Filed 11-22-02; 8:45 am]
BILLING CODE 4410-02-P



National Crime Prevention and Privacy Compact Council Meeting

June 24, 2003

PROTECT ACT

Overview



Establishment of Protect Act

- President signed the “Protect Act” into law on April 30, 2003
- In General -
 - ◆ The Attorney General shall establish a pilot program for volunteer groups to obtain national and state criminal history background checks through a fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.
 - ◆ Pilot Programs consists of State Pilot Program and Child Safety Pilot Program
 - ◆ Pilot Programs must be established by July 29, 2003



State Pilot Program

- The Attorney General shall designate 3 states to participate in an 18-month program.
 - ◆ Tennessee
 - ◆ Virginia
 - ◆ Montana
- A volunteer organization in one of the 3 states participating in the State pilot program may submit a request for a fingerprint check from the participating state.
 - ◆ Boys and Girls Clubs of America
 - ◆ National Mentoring Partnerships
 - ◆ National Council of Youth Sports

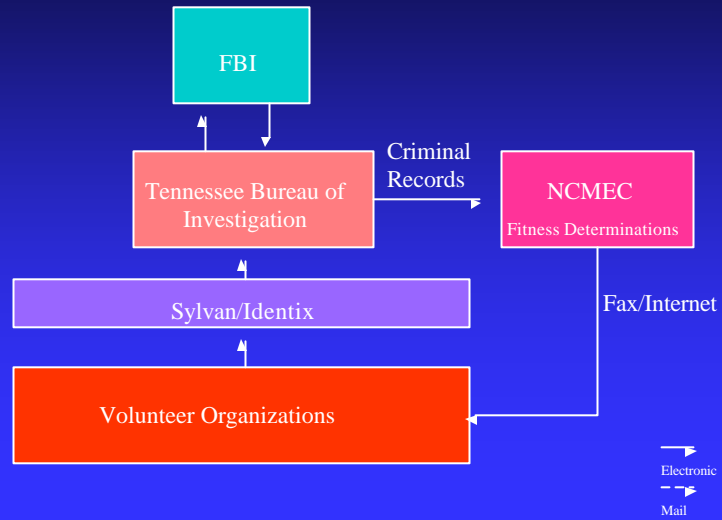


State Pilot Program

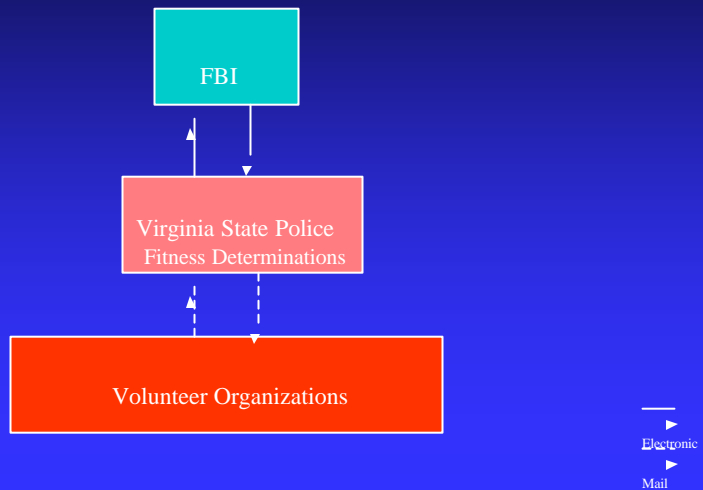
- Any criminal history record information resulting from the state and federal check shall be provided to the State or National Center for Missing and Exploited Children .
- Either the state or the NCMEC may make the fitness determination and convey the determinations to the volunteer organizations.



Tennessee

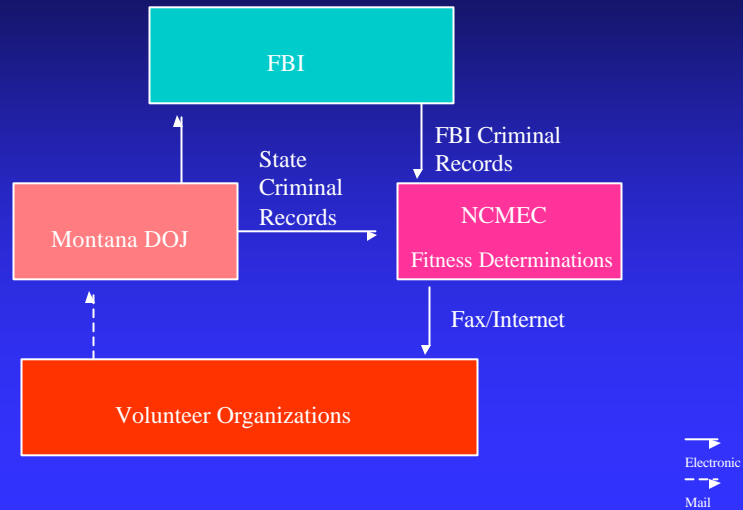


Virginia





Montana



Child Safety Pilot Program

- Attorney General shall establish an 18-month Child Safety Pilot Program that shall provide for the processing of 100,000 fingerprint check requests through the IAFIS of the FBI.
- The following organizations may participate as follows:
 - ◆ 33,334 for the Boys and Girls Clubs of America
 - ◆ 33,333 for the National Mentoring Partnership
 - ◆ 33,333 for the National Council of Youth Sports

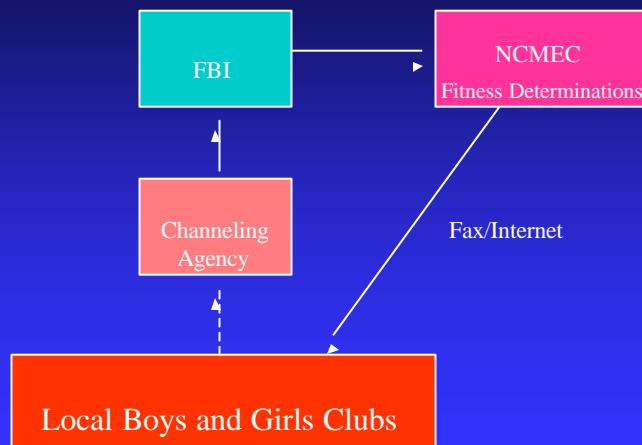


Child Safety Pilot Program

- The volunteer organization shall forward to the Attorney General the volunteer's fingerprints and obtain a statement completed and signed by the volunteer that:
 - ◆ Sets out the volunteer's name, address, date of birth appearing on a valid identification document as defined in Section 1028 of Title 18, United States Code, and photocopy of the valid identifying document;
 - ◆ States whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;
 - ◆ Notifies the volunteer of his right to correct an erroneous record held by the Attorney General.



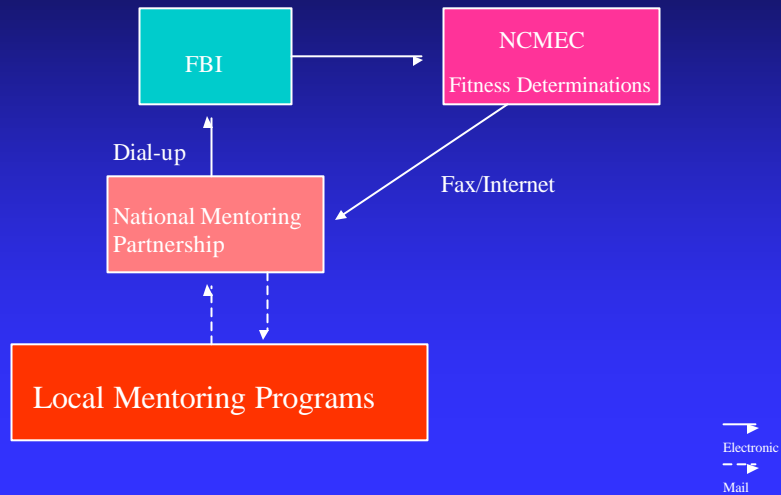
Boys and Girls Clubs of America



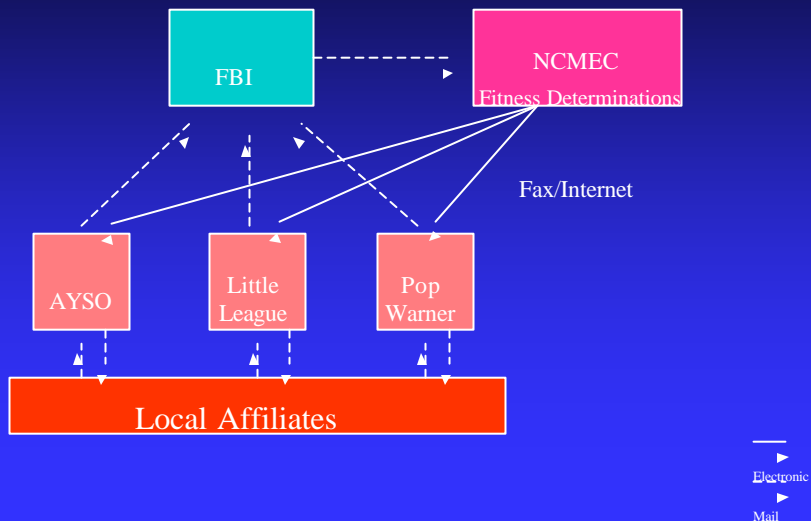
▶
Electronic
▶
Mail



National Mentoring Partnership



National Council of Youth Sports





Fitness Determinations

- Consistent with the privacy protections delineated in the National Child Protection Act, the NCMEC may make a determination whether the criminal history record information received in response to the criminal history background checks indicates that the volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children.



Fitness Determinations

- The fitness criteria will be established jointly, by the NCMEC, and the volunteer organizations.
 - ◆ FBI, NCMEC and volunteer organizations met on 6/10/03 to establish fitness criteria.
 - ◆ Fitness criteria (pending approval):
 - ◆ All felonies
 - ◆ All misdemeanors involving crimes against the person
 - ◆ All offenses involving sexual activity, even if considered "victimless crimes"
 - ◆ All crimes involving drugs
 - ◆ All crimes involving abuse to animals



State and Federal Fees

- A state may collect a fee to perform a criminal background check which may not exceed the actual costs to the State to perform such a check.
- The Attorney General may collect a fee which may not exceed \$18 to cover the cost to the FBI to conduct the background check.



Rights of Volunteers

- Each volunteer who is the subject of a criminal history background check is entitled to contact the Attorney General to initiate procedures to-
 - ◆ (1) obtain a copy of their criminal history record report; and
 - ◆ (2) challenge the accuracy and completeness of the criminal history record information in the report.



Reporting Requirements

Feasibility Study

- The Attorney General shall conduct a feasibility study within 180 days after the date of enactment of this Act. The study shall examine the capacity of states and FBI to perform non-criminal justice background checks on employees and volunteers who provide care to children, the elderly, and the disabled.
 - ◆ Survey was sent to all CTOs and SIB representatives on June 4, 2003
 - ◆ Survey will be posted on LEO CJIS Home Page
 - ◆ FBI CJIS will work in cooperation with the Compact Council, the Bureau of Justice Statistics and SEARCH to complete the feasibility study.



Reporting Requirements

Interim Report

- Based on the findings of the feasibility study, the Attorney General shall, not later than 180 days after the date of enactment of this Act, submit to Congress an interim report, which may include
 - ◆ recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.



Reporting Requirements

Final Report

- Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after the completion of the pilot project, submit to Congress a final report, including recommendations, which may include
 - ◆ a proposal for grants to States to develop or improve programs to collect fingerprints and perform background checks on individuals that work with children, the elderly or the disabled, and
 - ◆ recommendations for amendments to the NCPA and VCA so the qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers



Pending Legal/Policy Issues

- Appeals
- User Agreements
- Record retention
- Subsequent use, if any, of background check information
 - ◆ Information sharing to alleviate multiple checks on same individual